

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUL R. CASTILLO,

Plaintiff.

v.

JOHN SKOBA, Vice President of Aurora
Loan Services, LLC, et al.,

Defendant.

Case No. 10cv1838 BTM (WMc)

ORDER RE MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff filed his Complaint, which alleges a variety of federal and state claims, on September 3, 2010 and simultaneously moved for a temporary restraining order enjoining the sale of his home at a foreclosure sale. The foreclosure sale is scheduled for September 15, 2010.

Injunctive relief is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Winter v. Natural Res. Def. Council, Inc.*, __ U.S. __, 129 S. Ct. 365, 375-76 (2008). A plaintiff seeking preliminary injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.*

Plaintiff has not met his burden of proving that he will likely succeed on the merits. His main argument in support of stopping the foreclosure sale is that Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) did not have the authority to transfer the

1 promissory note to the note's current holder.

2 Plaintiff executed the promissory note, which was secured by a deed of trust on his
 3 home, in September 2005. MERS was the beneficiary under the deed of trust, acting as
 4 nominee for the lender, Home Loan Specialists, Inc. MERS later transferred its beneficial
 5 interest from MERS, as nominee to Home Loan Specialists, to Defendant Aurora Loan
 6 Services, Inc. Plaintiff argues that because MERS was merely the nominee, it did not have
 7 the authority to transfer the beneficial interest in the deed of trust to Aurora.

8 But contrary to Plaintiff's contention, a typical deed of trust give MERS the power to
 9 assign the beneficial interest as nominee.¹ See *Wurtzberger v. Resmae Mortg. Corp.*, 2010
 10 WL 1779972, * 3–4 (E.D. Cal. Apr. 29, 2010) (explaining that since the Deed of Trust named
 11 MERS as the beneficiary it had the right to foreclose and the authority to assign its beneficial
 12 interest under the deed of trust); *Pantoja v. Countrywide Home Loans, Inc.*, 640 F. Supp. 2d
 13 1177, 1188-90 (N.D. Cal. 2009) (holding that pursuant to the plain terms of the Deed of Trust
 14 and § 2924, MERS had a right to conduct the foreclosure process); *Santarose v. Aurora*
 15 *Bank FSB*, 2010 WL 2232819, at * 5 (S.D. Tex. June 2, 2010) ("By the plain language of the
 16 Deed of Trust, MERS had the right to foreclose the property."). Here, Plaintiff has only
 17 attached two pages of the deed of trust to his motion and does not include the portion of the
 18 deed of trust discussing the transfer of the beneficial interest. Plaintiff has therefore failed
 19 to meet his burden of showing that the deed of trust does not give MERS the power to
 20 transfer the beneficial interest.

21 Plaintiff also contends that MERS did not have the authority to assign the note to its
 22 current holder, which is Defendant Aurora Loan Services. But Plaintiff has not submitted any
 23 evidence that MERS itself was the one who assigned the note. Nor has he submitted any
 24

25 ¹ California Civil Code §§ 2924-2924k provide a "comprehensive framework for the
 26 regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed
 27 of trust." *Moeller v. Lien*, 25 Cal. App. 4th 822, 830 (1994). Within this framework,
 28 nonjudicial foreclosure proceedings can be instituted by "the trustee, mortgagee, or
 beneficiary, or any of their authorized agents" by filing a notice of default with the office of the
 recorder. Cal. Civ. Code § 2924(a)(1). No less than three months after the filing of the
 notice of default, a notice of sale may be given by "the mortgagee, trustee, or other person
 authorized to take the sale." Cal. Civ. Code § 2924(a)(3).

1 evidence showing that the assignment to Aurora never occurred or was somehow invalid.

2 The Court also rejects Plaintiff's argument that because the note and the deed of trust
3 have been split, meaning that they are owned by two separate entities, they are both invalid.
4 Even assuming Plaintiff is correct that splitting the note and deed invalidates them, Plaintiff
5 has not submitted any evidence showing that they have been split.

6 For these reasons Plaintiff has failed to show he is likely to succeed on the merits and
7 the Court **DENIES** his motion for a temporary restraining order.

8 **IT IS SO ORDERED.**

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10 DATED: September 7, 2010



11
12 Honorable Barry Ted Moskowitz
United States District Judge
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